

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL REVISION NO. 45 OF 2019

(Arising from the decision of Klombero in Civil Appeal No 9. Of 2013, originated
from Civil Case No. 33 of 2000 at Mkamba Primary Court)

1. Asha Athumani

2. TRIFONI KOMBANILA ----- APPLICANTS

VERSUS

Sebastian Kataya and 30 Others----- RESPONDENTS

RULING

Date of last order: 30.03.2021

Date of Ruling: 09.04.2021

Ebrahim, J.:

This is a ruling on the preliminary objection raised by the Counsel for the Respondent after being served with the instant application for revision. The application for revision before me has been brought under **section 22(1) of the Magistrate Court Act, Cap 11 RE 2019** supported by an affidavit deposed by the Applicants. This application for revision has a chequered history as the original case began twenty-one years ago, i.e., Civil Case No 33/2000 at Mkamba Primary

Court. At this stage I would not go into the historical background of the matter.

The point of preliminary objection raised by the Counsel for the Respondent are that:

1. The application is hopelessly out of time
2. The affidavit supporting the chamber summons is defective for citing wrong enabling provision
3. The affidavit supporting the chamber application is defective for having a defective verification clause.
4. The chamber application is unmaintainable since the applicants have no locus standi.

When this matter was called for hearing of the preliminary objection, the 1st Applicant appeared in person of which the 2nd Respondent was reported to be sick. The Respondents were represented by advocate Juma Mwakimatu.

The court prompted the 1st Applicant as to whether they would prefer written submission being that they have no representation, the 1st Applicant insisted on the oral submission.

Mr. Mwakimatu firstly made an oral application to abandon the 3rd and 4th points of objection; the prayer that was granted by the court.

He submitted on the first point of objection that in law application for revision should be filed within sixty days as per Part III Item 21 of the Law of Limitation Act, Cap 89 RE 2019. He recounted the days from 09.05.2019 when the decision was reached at Kilombero District Court which is a subject of this revision to 22nd November 2019 when the instant application was lodged. To cement his stance, he cited the case of **National Bank of Commerce Vs. Sarghuddin Meghji**, [1998] TLR, pg 503 and prayed for the application to be dismissed under section 3(1) read together with section 2(c) of Cap 89.

In arguing the second point of objection, Mr. Mwakimatu stated that the provision of the law i.e., **section 22(1) of the Magistrate Courts Act, Cap 11 RE 2019** under which the instant application has been brought is wrong because it gives power of revision to the District Court but not High Court. He emphasized that the proper provision would be **section 44(1)(b) of the Magistrate Courts Act**. He argued further that, this application has no legs to stand at the High Court because citing a wrong provision is not a technicality but it goes to the root of the

matter. He referred to the case of **Chama Cha Walimu Tanzania Vs Attorney General**, Civil Revision No. 151 of 2008, where the Court of Appeal quoted with approval the case of **China Heinan Corporation Vs Salvand K. Rwegasira**, Civil Reference No.22 of 2005 where it was held that wrong citation is not a technicality. He prayed for the application to be dismissed with costs.

The 1st Applicant had nothing much to respond, understandably so. She said that she filed the application on 22.11.2019 when she was told by the court. She stated also that she did not know that the provision of the law used to file the case was wrong.

Advocate Mwakimatu had nothing to rejoin.

In dealing with the points of preliminary objection, I find it apt to begin with the second point of objection on the wrong provision.

Indeed, as intimated earlier, the application for revision has been brought under **section 22(1) of the Magistrate Courts Act, Cap 11 RE 2019** which is under **Part III (b) of Cap 11** on the Appellate and Revisional Jurisdiction of District Courts. The said section reads as follows:

*"22. -(1) A **district court** may call for and examine the record of any proceedings **in the primary court** established for the district for which it is itself established, and may examine the records and registers thereof, for the purposes of satisfying itself as to the correctness, legality or propriety of any decision or order of the primary court, and as to the regularity of any proceedings therein, **and may revise any such proceedings.**" (emphasis is mine).*

It is conspicuous from the above provision of the law that the cited provision caters for power of revision of the District Court on the records of any proceedings and examination of the decision from the Primary Court.

As for the High Court, the same derives powers of revision from **section 44(1)(b) of the Magistrate Courts Act, Cap 11 RE 2019**, as correctly argued by the Counsel for the Respondents. The section reads:

"44.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court—

may, in any proceedings of a civil nature determined in a district court or a court of a resident magistrate on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it sees fit:"

Therefore, it is certain that the Applicants applied wrong provision of the law the effect of it being that the court has not being moved at all. Consequently, it is obvious that there is no revision before this court

for determination and outrightly, I struck this application with costs for citing wrong provision of the law to move this court to perform its judicial function.

Accordingly ordered


R.A. Ebrahim
Judge



Dar Es Salaam
09.04.2021